



A Professional Limited Liability Company

307 North Michigan Avenue, Suite 1020
Chicago, Illinois 60601
Telephone: 312-372-3930
Facsimile: 312-372-3939

Washington, DC Office
1629 K Street NW, Suite 300
Washington, DC 20006

Jeremy M. Kissel
Admitted in Illinois, Florida and District of Columbia

December 8, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Via ECFS

**Re: American Cable Association (“ACA”) Notice of Ex Parte Presentation; MB
Docket No. 07-198; GN Docket Nos. 09-47, 09-51, 09-137**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission’s rules, we are electronically filing this letter in the dockets referenced above as notice of a December 7, 2009, meeting with Commissioner Meredith Attwell Baker, Legal Advisors Christi Shewman and Bradley Gillen, and the following persons:

Steve Friedman, Chairman, ACA; Chief Operating Officer, Wave Broadband
James Bruder, Vice Chairman, ACA; Chief Executive Officer, MetroCast Communications
Matthew M. Polka, President and Chief Executive Officer, ACA
Ross J. Lieberman, Vice President of Government Affairs, ACA
Jeremy M. Kissel, Cinnamon Mueller, Outside Counsel for ACA

During the meeting, participants discussed how broadcasters and programmers coerce smaller cable operators into accepting unreasonable prices, terms, and conditions for broadcast, cable and sports programming that result in higher costs and less choices for consumers. Participants explained that because of existing regulations and media consolidation, these broadcasting and programming entities exercise insurmountable bargaining power in their negotiations with smaller cable operators. In addition to seeking unjustifiably high carriage fees per subscriber per month, the media conglomerates call for unreasonable tiering and penetration requirements that require cable operators to put their programming on their most basic tiers, which result in their customers paying for networks that they never watch. These carriage demands are most egregious in negotiations involving national and regional sports programming.

ACA also outlined its concerns with the recently announced Comcast-NBC Universal deal. Participants explained that without forced divestitures or conditions, Comcast-NBC Universal will wield its enhanced market power to drive up artificially the per subscriber cost of its programming, particularly its newly acquired local broadcast stations and its “must-have” national and regional cable networks that air live sporting events. Moreover, without restrictions, the new media conglomerate will use its bargaining power to force other pay-television providers to distribute its programming on basic tiers, regardless of consumer interest in the content. ACA also raised concerns that Comcast-

NBC Universal will be able to force its preferred business model for online video distribution upon others, regardless of whether such a model would naturally develop in a competitive market.

During the meeting, participants further discussed the following matters contained in the association's filing in the National Broadband Plan for Our Future Inquiry concerning Broadband Adoption.¹

ACA explained that all-or-nothing online distribution models that require broadband service providers to pay a per-subscriber fee on behalf of all of their broadband subscribers in order to permit any one of their high-speed Internet customers to obtain access to the content or services of the distributor (e.g., ESPN360), increases the cost of basic broadband access for all customers, and, correspondingly, decreases the rate upon which broadband is adopted, particularly among low income households where cost is a factor. ACA representatives also stressed that broadband service providers should not be impeded from offering flexible-pricing models such as consumption-based billing plans. A prohibition on this type of retail pricing would limit the flexibility of broadband service providers to offer lower cost options for price-sensitive consumers who only intend to use the Internet for low-bandwidth applications and services, such as email.

Sincerely,



Jeremy M. Kissel

cc: Commissioner Meredith Attwell Baker (*via email*)
Christi Shewman (*via email*)
Bradley Gillen (*via email*)
Steve Friedman
James Bruder
Matthew Polka
Ross Lieberman

¹ See *Comment Sought on Broadband Adoption*, GN Docket Nos. 09-47, 09-51, 09-137, NBP Public Notice #16, DA 09-2403 (rel. Nov. 10, 2009), Comments of the American Cable Association (filed Dec. 2, 2009).